

PALMER BIEZUP & HENDERSON LLP

By: Michael B. McCauley (MM 7231)

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Attorneys for Defendants Bean Dredging LLC,

Bean Excavation, LLC, C.F. Bean LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD CLARK,

Plaintiff,

vs.

BEAN DREDGING, LLC, et al.

Defendants.

:
:
Civ. No: 07 CV 8174

:
:
The Honorable Sidney H. Stein

:
:
ANSWER TO COMPLAINT

Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC, by their undersigned attorneys, answer the Complaint filed herein by Plaintiff Richard Clark as follows:

ANSWER TO FIRST COUNT

1. The averments in Paragraph 1 of Plaintiff's Complaint are conclusions of law and therefore are denied.

2. The averments in Paragraph 2 of Plaintiff's Complaint are conclusions of law and therefore are denied.

3. Admitted as to Bean Excavation LLC; otherwise denied.

4. Admitted in part; denied in part. It is admitted only that Plaintiff was in the employ of defendant Bean Excavation LLC on March 21, 2006. The remaining averments in Paragraph 4 of Plaintiff's Complaint are denied.

5. Admitted in part; denied in part. It is admitted only that Plaintiff was in the employ of defendant Bean Excavation LLC on March 21, 2006. The remaining averments in Paragraph 5 of Plaintiff's Complaint are denied.

6. Denied.

7. Denied.

WHEREFORE, Defendants demand judgment in their favor and against Plaintiff dismissing Count I of his Complaint with prejudice.

ANSWER TO SECOND COUNT

8. Answering defendants repeat and re-allege each and every answer to paragraphs one through seven of Plaintiff's Complaint and incorporate the same herein as if fully set forth at length.

9. Denied.

10. The averments in Paragraph 10 of Plaintiff's Complaint are conclusions of law and therefore are denied.

WHEREFORE, Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC demand judgment in their favor and against Plaintiff dismissing Count II of his Complaint with prejudice, and further demand judgment in their favor dismissing the Complaint in its entirety and for attorneys' fees, and such other relief as the Honorable Court may deem appropriate.

FIRST DEFENSE

The Complaint fails to state a claim against answering defendants for which relief can be granted.

SECOND DEFENSE

The damages or injuries alleged in Plaintiff's Complaint, if they occurred, which is denied, were the result of acts, errors, omissions or negligence of other parties for which answering defendants are not responsible.

THIRD DEFENSE

The plaintiff's own negligence was the sole cause of his alleged injuries and accordingly, plaintiff's claims must be dismissed.

FOURTH DEFENSE

Plaintiff was contributorily negligent and any damages to which he is entitled must be reduced accordingly.

FIFTH DEFENSE

The damages or injuries, or some portion thereof, alleged in Plaintiff's Complaint, if they occurred, which is denied, were the result of the plaintiff's assumption of the risk, for which answering defendants are not responsible.

SIXTH DEFENSE

Plaintiff's alleged damages, if any, were solely caused by the failure of Plaintiff to mitigate his damages.

SEVENTH DEFENSE

Plaintiff's claims are barred or decreased by the doctrine of setoff.

WHEREFORE, Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC demand judgment in their favor and against Plaintiff dismissing the Complaint in its entirety and for attorneys' fees, and such other relief as the Honorable Court may deem appropriate and just under the circumstances.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York
October 17, 2007

By: /s/Michael B. McCauley
Michael B. McCauley (MM 7231)

Attorneys for Defendants Bean Dredging
LLC, Bean Excavation, LLC, C.F. Bean LLC

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that service of a true and correct copy of Defendants' Answer was made to the below-listed counsel on October 17, 2007 via United States First-Class Mail, postage prepaid, as follows:

Michael H. Zhu, Esq.
MICHAEL H. ZHU, ESQ. P.C.
14 Wall Street, 22nd Floor
New York, New York 10005

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York
October 17, 2007

By: /s/ Michael B. McCauley
Michael B. McCauley (MM 7231)

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